

In the Matter of License No. 80212
Issued to: KENNETH R. MILLER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

445

KENNETH R. MILLER

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 2 May, 1950, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended License No. 80212 issued to Kenneth R. Miller upon finding him guilty of "negligence" based upon two specifications alleging in substance, that while serving as Master on board the American S. S. WILLIAM SPROULE, under authority of the document above described, on or about 19 April, 1950, while en route from Colon, Panama Canal, to Port Everglades, Florida, he contributed to the grounding of said vessel by failing to take prompt and corrective action to avoid grounding his vessel off Old Providence Island, Caribbean Sea.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and each specification.

Thereupon, the Investigating Officer made his opening statement in which he recited the circumstances surrounding the stranding of the WILLIAM SPROULE which was made the subject of an investigation on 1 May, 1950. He then rested his case. In defense, Appellant stated he had felt positive of the position of the ship but admitted he had used very poor judgment.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by plea and entered an order suspending Appellant's License No. 80212, and all other valid licenses, certificates of service, and merchant mariner's documents issued to him, for a period of three months. A temporary license was issued to Appellant.

From that order, this appeal has been taken, and it is urged that the suspension should be made wholly probationary because Appellant had no prior record for thirty-five years at sea.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 19 April, 1950, Appellant was serving as Master on board the American S.S. WILLIAM SPROULE, acting under authority of his License No. 80212, while the ship was en route from Colon, Panama Canal, to Port Everglades, Florida.

On this date while attempting to pass to the westward of Old Providence Island, Caribbean Sea, Appellant was on the bridge with the Second Officer who was on watch. Based on his visual observations and dead reckoning, the Appellant believed that they would pass the island abeam by a distance of approximately seven miles. The Second Officer had taken bearings and advised the Master that according to these bearings the ship would pass the island abeam by only two miles. In order to safely pass the island, the vessel should have been navigated at least six miles off the island and the Sailing Directions state that all vessels should take unusual precaution in the vicinity of Old Providence Island on account of the strong and irregular currents. Despite these warnings, Appellant did not reduce speed, which was

approximately eleven knots, nor did he change course until about three minutes after this information had been given to him by the Second Officer. When advised by the Second Officer of his estimated position, Appellant turned on the fathometer, which had not been in continuous operation, and was informed that the vessel was in shallow water. He immediately ordered the vessel to port but this action was too late and the vessel grounded causing damage to the ship and cargo estimated to be \$100,000 each. The grounding occurred approximately two miles off Old Providence Island.

There is no record of any previous disciplinary action having been taken against Appellant by the Coast Guard or its predecessor authority during his thirty-five years at sea, including twenty years as a Master.

OPINION

Appellant pleaded "guilty" to both specifications and the charge. His appeal is solely a plea for clemency based upon his prior unblemished record on American merchant ships for a period of thirty-five years. Appellant requests that consideration be given to modifying the Examiner's order and making the suspension probationary.

Considering the admonition contained in the Sailing Directions, that unusual precaution should be exercised because of the strong and irregular currents in this vicinity, together with the advice by the Second Officer, there is no doubt in my mind that Appellant was guilty of "negligence". Clearly, it was Appellant's duty to have established his vessel's position by more definite means than the use of his seaman's eye.

CONCLUSION

The order imposed by the Examiner is not considered to be excessive. However, in view of Appellant's long, unblemished record in the merchant marine service, the order will be modified as follows:

ORDER

It is ORDERED and DIRECTED that the order of the United States Coast Guard Examiner dated 2 May, 1950, be, and the same is, hereby modified to provide for the suspension of Appellant's License No. 80212 for a period of two (2) months commencing on the date of surrender of the temporary license issued to Appellant. As so modified, said order is AFFIRMED.

Merlin O'Neill

Dated at Washington, D. C., this 13th day of July, 1950.

***** END OF DECISION NO. 445 *****

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